



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Brent E. Silvers, M.D.  
Decision and Order**

On May 9, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Brent E. Silvers, M.D. (hereinafter, Registrant) of Irvine, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BS2811392 on the ground that Registrant "is without authority to handle controlled substances in the State of California, the state in which [Registrant is] registered with the DEA." *Id.* at 1-2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that on January 11, 2019, the Medical Board of California (hereinafter, Board) issued a Decision revoking Registrant's California medical license, effective February 8, 2019. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.*, at 2 (citing 21 CFR § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated June 19, 2019, a Diversion Investigator (hereinafter, DI) assigned to the Riverside District office, Los Angeles Field Division, stated that he and another DI traveled to Registrant's registered address located at 2 Hughes, Suite 150, Irvine, California

92618 on May 10, 2019. Request for Final Agency Action dated July 10, 2019 (hereinafter, RFAA), Government Exhibit (hereinafter, GX) GX 4 (DI's Declaration). The DI stated that upon arrival at the registered address, "Registrant identified himself . . . as Dr. Silvers" to the DIs. *Id.* The DI then "personally served the [OSC] on Registrant by handing it to him." Registrant signed a DEA Form 12, Receipt for Cash or Other Items, to acknowledge his receipt of the Show Cause Order. *Id.*; *see also* GX 4B.

In its RFAA, the Government represents that "at least [thirty] days have passed since the time the [OSC] was served on Registrant" and he "has not requested a hearing and has not otherwise corresponded or communicated with DEA." RFAA, at 1. The Government requests that "Registrant's DEA Registration [] be revoked based on 21 U.S.C. § 824(a)(3) because Registrant has no valid medical license in California . . . [and] is without state authority to handle controlled substances in California." *Id.* at 2-3.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on May 10, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR § 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. BS2811392 at the registered address of 2 Hughes, Suite 150, Irvine, California 92618. GX 1 (Certification of Registration Status). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on February 28, 2021, and is "in an active pending status." *Id.*

### **The Status of Registrant's State License**

On January 11, 2019, the Medical Board of California (hereinafter, Board) issued a Decision and Order (hereinafter, Order) revoking Registrant's medical license, effective February 8, 2019. GX 3 (Order). The Board's Order adopted the Proposed Decision of a state Administrative Law Judge (ALJ) following a lengthy hearing resulting from Accusations brought by the Board against Registrant. GX 3 (ALJ Proposed Decision), at 1. According to the ALJ's Proposed Decision, the Board initiated an investigation into Registrant's medical practice after receiving anonymous complaints in February and March 2016 and a consumer complaint in July 2017, which was accompanied by a copy of a Complaint for Medical Negligence filed in the Superior Court of California. *Id.* at 2. On September 26, 2017, the Board issued an "Interim Suspension Order No Practice" against Registrant, which was upheld on October 27, 2017. *Id.* On April 26, 2018, the Board filed its First Amended Accusation against Registrant and it filed its Second Amended Accusation on November 16, 2018. *Id.* The ALJ affirmed the Board's Second Amended Accusation on December 28, 2018, and issued the Proposed Decision revoking Registrant's California Physician's and Surgeon's Certificate. *Id.* at 17.

The ALJ found that Registrant “has complied with the terms of the Interim Suspension Order and he has tested negative for alcohol in random testing.” *Id.* at 2. However, the ALJ ultimately found that “clear and convincing evidence established that [Registrant] has a mild cognitive disorder and severe alcohol use disorder,” which “is adversely affecting [his] memory and judgment” and that his “ability to practice medicine safely is impaired because a mental or physical illness [is] affecting his competency.” *Id.* at 13. He further found that “clear and convincing evidence” established that Registrant engaged in “unprofessional conduct based on gross negligence or repeated acts of negligence” and “unprofessional conduct by engaging in acts of sexual misconduct.” *Id.* at 14, 15. He concluded that “[p]ublic protection is best served by revocation of [Registrant’s] license.” *Id.* at 17. The Board adopted the ALJ’s Proposed Decision and ordered that revocation become effective on February 8, 2019. GX 3 (Order).

According to the website of the California Department of Consumer Affairs, of which I take official notice, Registrant’s license is still revoked.<sup>1</sup>

<https://search.dca.ca.gov/details/8002/A/49201/cdbaeea6d15fdfd3a0d8a46e76dde3f9> (last visited July 19, 2019).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in California, the State in which he is registered with the DEA.

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<sup>1</sup> Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within 15 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have 15 calendar days to file a response.

## DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71

Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Blanton, supra*, 43 Fed. Reg. at 27,617.

According to the California Uniform Controlled Substances Act, “No person other than a physician . . . shall write or issue a prescription.” Cal. Health & Safety Code § 11150 (West, Westlaw current with urgency legislation through Ch. 5 of 2019 Reg. Sess.). Further, “physician,” as defined by California statute, is a person who is “licensed to practice” in California. Cal. Health & Safety Code § 11024 (West, Westlaw current with urgency legislation through Ch. 5 of 2019 Reg. Sess.).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, I will order that Registrant’s DEA registration be revoked.

## **ORDER**

Pursuant to 28 CFR § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BS2811392 issued to Brent E. Silvers, M.D. Further, I hereby deny any pending application of Brent E. Silvers, M.D. to renew or modify this registration, as well as any pending application of Brent E. Silvers, M.D. for registration in California. This Order is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**Dated:** August 2, 2019.

**Uttam Dhillon,**  
*Acting Administrator.*

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